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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/066,406	01/31/2002	Donald Richard Marquis	RLOAD.001A	3751

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EXAMINER

PICKETT, JOHN G

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 08/13/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

EC

Office Action Summary

Application No.

10/066,406

Applicant(s)

MARQUIS, DONALD RICHARD

Examiner

Greg Pickett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 January 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14, 16-32, 34-36 and 40-42 is/are rejected.
- 7) ☒ Claim(s) 15, 33 and 37-39 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4. 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. Color photographs and color drawings are acceptable only for examination purposes unless a petition filed under 37 CFR 1.84(a)(2) is granted permitting their use as acceptable drawings. In the event that applicant wishes to use the drawings currently on file as acceptable drawings, a petition must be filed for acceptance of the color photographs or color drawings as acceptable drawings. Any such petition must be accompanied by the appropriate fee set forth in 37 CFR 1.17(h), three sets of color drawings or color photographs, as appropriate, and an amendment to the first paragraph of the brief description of the drawings section of the specification which states:

The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the U.S. Patent and Trademark Office upon request and payment of the necessary fee.

Color photographs will be accepted if the conditions for accepting color drawings have been satisfied.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 6, 7, 11, 12, 24, 25, 29, 30, and 41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 6 and 24 recite the limitation "the opening" in line 1. There is insufficient antecedent basis for this limitation in the claims.

Claims 7 and 25 depend from claims 6 and 24 respectively.

Claims 11 and 29 recite the limitation "the rounded corners" in lines 2-3. There is insufficient antecedent basis for this limitation in the claims.

Claims 12 and 30 depend from claims 11 and 29 respectively.

Claim 41 depends from itself.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Deppa (US 1,571,235).

Regarding claim 1, Deppa discloses an assembly for housing shotgun shells (Figures 1-4) with a container (1) having a floor (4), two sidewalls (3), and rear wall (2), and a cover (A). The assembly of Deppa functions as claimed by the applicant.

As to claim 2, Deppa discloses cover (A) with a front panel, rear panel, two side panels, and a rectangular base (as shown, Figures 3 and 4).

4. Claims 1-4, 8, 10, 11, 13, 14, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Sauey (US 2,928,530).

Regarding claim 1, Sauey discloses an assembly for housing shotgun shells (Figures 1-3) with a container having a floor (22), two sidewalls (24), and rear wall (30), and a cover (12). The assembly of Sauey functions as claimed by the applicant.

As to claim 2, Sauey discloses cover (12) with a front panel, rear panel, two side panels, and a rectangular base (as shown, Figure 1).

As to claims 3 and 4, Sauey discloses semicircular cutouts (14).

As to claim 8, Sauey discloses rear wall (30) with rounded corners.

As to claim 10, Sauey discloses the height of the two sidewalls (24) less than the rear wall (30) due to the rounded corners.

As to claim 11, Sauey discloses the height of the two sidewalls (24) meeting the point where the rounded corners of rear wall (30) end (as shown, Figure 2).

As to claims 13 and 14, the cover of Sauey is held in place by friction; therefore, Sauey discloses a frictional latching mechanism.

As to claim 16, the exterior side of floor (22) of Sauey is capable of receiving labels.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claims 5, 9, 12, 17-23, 26-32, and 34-36 rejected under 35 U.S.C. 103(a) as being unpatentable over Sauey.

Regarding claim 5, Sauey discloses the claimed invention except for the particular radius claimed by the applicant. It would have been an obvious matter of design choice to provide the particular radius claimed by the applicant, since such a modification would have involved a mere change in size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

As to claim 9, Sauey discloses the claimed invention except for the particular radius claimed by the applicant. It would have been an obvious matter of design choice to provide the particular radius claimed by the applicant, since such a modification would have involved a mere change in size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

As to claim 12, Sauey discloses the claimed invention except for the particular height claimed by the applicant. It would have been an obvious matter of design choice to provide the particular height claimed by the applicant, since such a modification would have involved a mere change in size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

As to claim 17, the assembly of Sauey is made of plastic (See for example, Col. 2, ll. 43-49). Sauey discloses the claimed invention except for the particular thickness claimed by the applicant. It would have been an obvious matter of design choice to provide the particular thickness claimed by the applicant, since such a modification would have involved a mere change in size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

As to claim 18, the assembly of Sauey is dimensioned to hold 25 12-gauge shells (see Figure 2, and Col. 2, ll. 55-57).

Regarding claim 19, Sauey discloses an assembly for housing shotgun shells (Figures 1-3) with a container having a floor (22), two sidewalls (24), and rear wall (30), and a cover (12). The assembly of Sauey functions as claimed by the applicant.

Sauey does not expressly disclose a stand. The examiner interprets a common table as a stand adapted to detachably hold the container at a first orientation to facilitate positioning of shells within the container recess. It would have been obvious to

one of ordinary skill in the art at the time the invention was made to place the assembly of Sauer on a table to load the assembly.

As to claim 20, Sauey discloses cover (12) with a front panel, rear panel, two side panels, and a rectangular base (as shown, Figure 1).

As to claims 21 and 22, Sauey discloses semicircular cutouts (14).

As to claim 23, Sauey discloses the claimed invention except for the particular radius claimed by the applicant. It would have been an obvious matter of design choice to provide the particular radius claimed by the applicant, since such a modification would have involved a mere change in size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

As to claim 26, Sauey discloses rear wall (30) with rounded corners.

As to claim 27, Sauey discloses the claimed invention except for the particular radius claimed by the applicant. It would have been an obvious matter of design choice to provide the particular radius claimed by the applicant, since such a modification would have involved a mere change in size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

As to claim 28, Sauey discloses the height of the two sidewalls (24) less than the rear wall (30) due to the rounded corners.

As to claim 29, Sauey discloses the height of the two sidewalls (24) meeting the point where the rounded corners of rear wall (30) end (as shown, Figure 2).

As to claim 30, Sauey discloses the claimed invention except for the particular height claimed by the applicant. It would have been an obvious matter of design choice to provide the particular height claimed by the applicant, since such a modification would have involved a mere change in size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

As to claims 31 and 32, the cover of Sauey is held in place by friction; therefore, Sauey discloses a frictional latching mechanism.

As to claim 34, the exterior side of floor (22) of Sauey is capable of receiving labels.

As to claim 35, the assembly of Sauey is made of plastic (See for example, Col. 2, ll. 43-49). Sauey discloses the claimed invention except for the particular thickness claimed by the applicant. It would have been an obvious matter of design choice to provide the particular thickness claimed by the applicant, since such a modification would have involved a mere change in size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

As to claim 36, the assembly of Sauey is dimensioned to hold 25 12-gauge shells (see Figure 2, and Col. 2, ll. 55-57).

6. Claims 40-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deppa in view of Blunt (US 3,479,796).

Regarding claim 40, Deppa discloses a method of storing articles in a housing assembly comprising a container (1) and a cover (A). Deppa discloses positioning the articles in container (1) and positioning cover (A) relative to container (1). Deppa does not expressly disclose shotgun shells as the articles.

Blunt discloses the packaging of shotgun shells in a manner similar to Deppa. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the method of Deppa to store shotgun shells as taught by Blunt in order to store the articles for further use.

The examiner assumes claim 41 is dependent on claim 40. As such, the method of Deppa-Blunt discloses step of accessing the shells claimed by the applicant (see for example, Deppa, Col. 2, ll. 73-85).

As to claim 42, the method of Deppa-Blunt discloses the positioning of the shotgun shells as claimed by the applicant (See Blunt, Figure 2).

Allowable Subject Matter

7. Claims 15, 33, and 37-39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claims 6, 7, 24, and 25 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

9. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Paine, Fehr, Abdo, and Maricle disclose cartridge containers with storage styles similar to that of the applicant.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Greg Pickett whose telephone number is 703-305-8321. The examiner can normally be reached on Mon-Fri, 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

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Gregory Pickett
Examiner
August 11, 2003

GP


Mickey Yu
Supervisory Patent Examiner
Group 3700